

**Town of Galway**  
Saratoga County  
**Office of Code Enforcement Officer**

5910 Sacandaga Rd  
Galway, New York 12074  
Tele.- 518-882-6070

**GUIDE FOR ZONING BOARD OF APPEALS APPLICANTS**

This guide is intended to provide brief instructions for filing an appeal application and preparing a case before the Zoning Board of Appeals (ZBA). It should not be considered as legal advice. No guarantee of success is implied if the guide is followed, nor is denial implied by not following the guide. In all cases, the applicant should consult and review the current zoning regulations of the town of Galway (a copy of which is available on line or may be purchased from the town clerk during normal business hours).

**ZONING BOARD OF APPEALS**

A zoning law is a community's guide to its future development. That is its purpose. The very protections afforded residents and property owners within the community from undesirable development come from the restrictiveness of zoning. Zoning is characterized by preset regulations set in Galway's zoning ordinances and applicable uniformly within each zoning district. A landowner can look at the zoning map and ordinance restrictions and know that if he/she follows them, he/she has the right to use the land in a certain way and that neighboring properties are subject to the same restrictions. But, because all land in districts is subject to the same rules and because no two parcels of land are precisely the same, problems can arise. The purpose of the Zoning Board of Appeals is to relieve the pressure of too rigid enforcement of the zoning ordinance and any attendant hardship. The ZBA serves as a buffer between the property owner and the court designed to interpret, to perfect, and to ensure the validity of zoning.

Any person who stands to be "aggrieved" (i.e., injured or harmed) by the decision of the code enforcement officer may apply to the ZBA for relief. Commonly, the "aggrieved" party is the property owner who has been refused a permit, but an aggrieved party may also be a neighboring landowner who believes the officer's decision in issuing a permit was improper and will injure him/her. Also, anyone who has received an enforcement action (such as a cease-and-desist order) is eligible to take an appeal to the ZBA.

**Relief Granted by the Zoning Board of Appeals**

ZBA may affirm, modify or reverse the decision of the code enforcement officer. *Second*, the ZBA may grant or deny a variance. Because of this range of powers that the board has, it is essential that the applicant or duly authorized representative know what type of relief to request when making an application to the board.

If the applicant (either the landowner or a third party) believes the officer's decision was incorrect, the appropriate request is for an ***Interpretation of Zoning Regulations or Zoning Map***.

"An ***area variance*** shall mean the authorization by the Zoning Board of Appeals for the use of the land in a manner which is not allowed by the dimensional or physical requirements of the applicable zoning regulations". When granting an *area variance*, the ZBA shall take into consideration "the benefit of the applicant if the variance is granted, as weighed against the detriment to the health, safety and welfare of the neighborhood or community by such a grant". Requirements for proof are detailed below.

If the applicant wishes to use the land for other than a use allowable by the zoning regulations and believes he/she can show "unnecessary hardship", then the appropriate request is for a ***use variance***. A *use variance* may only be granted by the ZBA if the zoning has caused "unnecessary hardship". Requirements are detailed below.

**It is also possible for an applicant to make a request for a reversal and in the same application ask for a variance if the reversal is not granted.**

To be an applicant before the Zoning Board of Appeals, one must be the property owner or duly authorized representative of the owner and have received a formal decision or action by the code enforcement officer.

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A duly authorized representative should be aware of the procedure involved in applying for and receiving a determination. In each case, proof must be presented under the applicable legal standards that is sufficient to allow the board to grant relief.

**APPLICATION PROCEDURE/CONTENTS**

Each applicant must submit a completed application **to the zoning/code enforcement officer** by the *first of the month* to be heard at the *following month's regularly scheduled meeting*. (E.g., an application received on January 1 would be scheduled for the February meeting.) The ZBA meets the first Tuesday of each month.

**A completed application includes:**

- 1) A signed and dated application form - Parts I, II and III completed (attached)
- 2) A State Environmental Quality Review Act (SEQRA) Short Form (attached or available at [www.dec.ny.gov/permits/6191.html](http://www.dec.ny.gov/permits/6191.html)) - Part I only, completed, signed and dated
- 3) **Five (5) 11x17 copies of a surveyed plot plan including, at a minimum, the following:**
  - A. All structures, existing and proposed, including specific dimensions (sizes) and location(s) on the lot
  - B. Precise/accurate boundary lines and measured dimensions (distances) from all structures to all property lines
  - C. Location of water/well and septic facilities, proposed and existing, with separation distances between well and septic facilities on subject parcel, as well as adjacent properties noted
  - D. Adjacent landowners (names)
  - E. Any natural or man-made features that may affect the property, such as, roads, driveways, drains, ponds, or easements
- 4) A *non-refundable application fee* is to be paid to the Code Enforcement Officer at the time of application (please refer to the current Fee Schedule).

In addition to these items, other information that the applicant would like to be considered may be submitted. This may include photographs, statements from adjacent neighbors, building plans, etc. All information should be submitted at the time of filing. It is the applicant's responsibility to be sure that the application is complete and filed with the zoning/code enforcement officer on time.

**APPEAL PROCESS**

Appeals to the Zoning Board of Appeals must be taken within sixty (60) days after the determination resulting in the appeal. Upon filing of a completed application, the clerk of the ZBA will notify the applicant of a public hearing date. At any time before or during the hearing, or after the hearing if a decision is postponed, the applicant may submit written evidence and/or argument supporting his/her case. Preferably, written material should be submitted with the application, or as soon thereafter as possible, so that it can be reviewed by the ZBA members prior to the hearing. Anyone else having an interest in the outcome of the case is also entitled, and in fact encouraged, to submit written evidence.

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At the public hearing, the board will offer the applicant and/or duly authorized representative the opportunity to present his/her case for relief. The applicant may testify, call witnesses, or submit written evidence. Because an appeal is an adversarial proceeding, the board will offer the town an equal opportunity to present its side of the case. Each side will be able to question the other or the other's witnesses. In addition, board members may ask questions.

After the applicant and the town have presented their cases, any other interested persons will be given opportunity to speak and/or submit written material. If necessary, the hearing may be adjourned and continued at a later date. When all parties have been heard, the hearing will be closed. At this point, the board may discuss the case, reach a decision, or postpone a decision until a later meeting. If the board deems it necessary, the hearing may be reopened, either at the same session or at a later date. *Once the hearing is finally closed, the board must issue its decision within sixty-two (62) days.*

**BURDEN OF PROOF**

In judging an application for relief, the Zoning Board of Appeals is charged by statute and precedent with certain requirements. The applicant for relief should be prepared to make a case for relief under the rules established by the laws and courts of New York State.

**INTERPRETATION OF ZONING REGULATIONS OR ZONING MAP**

*If requesting a simple affirmation, modification or reversal to an enforcement decision, the applicant must prove that the code enforcement officer's decision was incorrect according to a proper interpretation of the town zoning regulations.*

**AREA VARIANCE**

*In making a determination in the case of a request for an area variance, the board shall consider:*

1. Whether an undesirable change will be produced in the character of the neighborhood or a detriment to a nearby property will be created by granting the area variance;
2. Whether the benefit sought by the applicant can be achieved by some method feasible for the applicant to pursue other than an area variance;
3. Whether the area variance is substantial;
4. Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; and
5. Whether the alleged difficulty was self-created, which consideration shall be relevant to the decision of the Zoning Board of Appeals but shall not necessarily preclude the granting of the area variance.

*The Zoning Board of Appeals may decide that a lesser variance than the one requested would be appropriate or may decide that there are other means available that would not require a variance.*

**USE VARIANCE**

*In order to "prove unnecessary hardship" the applicant shall demonstrate that:*

1. Under the applicable zoning regulations the applicant cannot realize a reasonable return provided that lack of return is substantial as demonstrated by competent financial evidence;
2. The alleged hardship relating to the property is unique and does not apply to a substantial portion of the district or neighborhood;
3. That the requested use variance, if granted, will not alter the essential character of the neighborhood;
4. That the alleged hardship has not been self created

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It should be noted that **all four standards must be met**. Thus, there may be a finding that a reasonable return cannot be realized from the property because of the applicable zoning regulation, but the requested variance would alter the essential character of the neighborhood. In such a case, a use variance cannot be granted.

The courts have specifically defined what burdens of proof must be demonstrated by an applicant in order to show lack of reasonable return, unique circumstances, non-alteration of essential character, and self-created hardship.

**Reasonable Return**

“The mere fact that the applicant may suffer a reduction in the value of property because of the zoning regulations or the fact that another permitted use may allow the sale of the property for a better price or permit a larger profit does not justify the granting of a variance on the grounds of unnecessary hardship”.  
(GUIDE FOR ZBA APPLICANTS, Cont’d.)

The applicant must demonstrate by actual “dollars and cents proof” that a reasonable return cannot be achieved.

**Unique Circumstances**

Difficulties or hardships shared with others will not support a variance related to one parcel upon the grounds of hardship. There must be at least proof that a particular property suffers a singular disadvantage through the operation of a zoning regulation before a variance can be granted.

**Essential Character**

One of the basic purposes of zoning is to adopt reasonable regulations in accordance with a comprehensive plan. The applicant must demonstrate that the requested variance will not disrupt or alter the character of a neighborhood or district in reference to this plan.

**Self-Created Hardship**

A use variance cannot be granted when the unnecessary hardship has been created by the applicant, or where he/she acquired the property knowing of the existence of the condition of which he/she now complains.

**CONCLUSION**

It is highly important that the potential applicant understands and appreciates the above rules and standards under which appeals and variance decisions must be made by the Zoning Board of Appeals. These standards have been set forth by the law and courts of New York State.

The Zoning Board of Appeals urges all applicants or duly authorized representatives to become familiar with the applicable standards and to present clear, definitive facts demonstrating that the criteria have been met. While the board will offer full assistance to applicants who may be unfamiliar with the procedure itself, the board cannot grant relief where proper legal proof is not adequately presented.